

Safeguarding Vulnerable Groups Act 2006: Independent Safeguarding Authority Scheme Consultation

Consultation Response Form

The closing date for this consultation is: 20
February 2008

Your comments must reach us by that date.

department for
children, schools and families



Please select the category that best describes you:

<input type="checkbox"/> Local Authority	<input type="checkbox"/> Local Safeguarding Children Board	<input type="checkbox"/> Voluntary Sector
<input type="checkbox"/> Education	<input type="checkbox"/> Recruitment/HR	<input type="checkbox"/> Self-employed
<input type="checkbox"/> National/Professional Association/Union	<input checked="" type="checkbox"/> Health/Care Sector	<input type="checkbox"/> Parent/Carer
<input type="checkbox"/> Other		

The Pharmaceutical Society of Northern Ireland is the regulatory and professional body for pharmacists in Northern Ireland. It exists to register, regulate and develop pharmacists and to promote the pharmacy profession within Northern Ireland, ensuring public safety and addressing public concerns.

The Society currently maintains a register of over 1800 pharmacists and over 500 premises registered within Northern Ireland.

1 Do you agree with the proposals for refining the definition of vulnerable adults? If not, please explain why? (paragraphs 2.5 - 2.7)

Yes No Not Sure

Comments:

The Pharmaceutical Society of Northern Ireland have no objections to the refined definition of vulnerable adults

Below is a table illustrating the range of pharmacists we understand would be regarded as working with vulnerable groups.

Regulated environments	Pharmacists affected
Hospitals	Hospital Pharmacists
Mental Health institutions	Mental Healthcare Pharmacists
Prisons	Prison Pharmacists
Community Pharmacies	Community Pharmacists

GP surgeries	Prescribing advisors and pharmacist prescribers
<p>Other sensitive environments:</p> <ul style="list-style-type: none"> • Schools and SureStart centres (Community pharmacists conducting educational visits) • Care Homes (Community Pharmacists conducting medicines management visits) • Domiciliary care (Community Pharmacists conducting deliveries) • Community groups engaged with the BCCP [building the community pharmacy partnership] 	

2 Are you content with our proposed understanding of frequently? (paragraphs 3.4 - 3.6)

Yes
 No
 Not Sure

Comments:

Yes, the PSNI are broadly content with the definition of frequently. We are given to understand that community pharmacy will be included under the ambit of regulated activity.

3 Are there situations other than those described in paragraphs 3.8 - 3.12 where children are 'merely incidental' to the provision of regulated activity to adults?

Yes (please explain)
 No
 Not Sure

Comments:

Possibly 16 and 17 year olds in a mental health ward being treated by a mental health pharmacist.

4 Do you agree with our proposals to include and exclude those forms of transport specified in paragraphs 3.24 – 3.25 as regulated activity? Do you have any further comments on these proposals?

Agree

Disagree

Not sure

Comments:

The PSNI do not at this moment foresee circumstances in which a pharmacist would regularly provide transport to vulnerable adults or children. However, in such an eventuality, the definitions given in the consultation appear to be fair and reasonable.

5 Do you agree that Children's Centres should be classed as establishments under the SVG legislation in the same way as schools? (paragraphs 3.26 - 3.34). Are there any other settings that should be covered?

Yes

No

Not Sure

Comments:

Yes. The PSNI believe the case for Children's centres being classed as establishments under the SVG legislation in the same way as schools, is well made in the consultation document. The PSNI understand this may bring under its ambit pharmacists visiting such establishments to give dietary, smoking cessation or medicines management or health care advice to parents and adults.

6 Do you agree that endorsing organisations should be able to check ISA status of the groups specified in paragraphs 4.2 - 4.11?

Agree

Disagree

Not sure

Comments:

Yes. The PSNI support the consultation's proposal that the CRB's Registered and Umbrella Bodies should be able to register an interest in individuals who are being endorsed to undertake regulated activity relating to children or vulnerable adults.

The PSNI also support the proposal that endorsing organisations that are Registered Bodies should be able to check ISA status where they are making decisions about the suitability of individuals who may engage in regulated activity.

The PSNI foresee the need for regulatory bodies to access ISA status records in order to conduct our responsibilities of maintaining the register of pharmacists and playing a role in fitness to practice, particularly in terms of the suitability of individuals to engage in regulated activity. The PSNI, as a keeper of a professional register, will therefore become a body registered with Access NI.

For the same reasons, professional regulators in the health sector, such as the PSNI, should be eligible to receive notification of an individual's change in ISA status. It is the intention of the PSNI to register an interest in all pharmacists on the ISA register.

Pharmacy employers in the healthcare sector should also be registered to check ISA status of all employees having access to children or vulnerable persons and any data relating to them.

Safe data storage and transmission systems will be important in order to protect individual's identities.

7 Do you agree that adoption agencies should be able to check ISA status on the groups set out in paragraph 4.12 - 4.17? Do you have any other comments on these proposals?

Agree

Disagree

Not sure

Comments:

Matters relating to adoption are not within the remit of the PSNI so no comment is offered.

8 Do you agree that it should be possible to check ISA status on the groups set out in paragraphs 4.18 - 4.21?

Agree

Disagree

Not sure

Comments:

Matters relating to childminding are not within the remit of the PSNI so no comment is offered.

9 Are you content with our proposals relating to ContactPoint in paragraphs 4.25? Do you have any other comments?

Yes

No

Not Sure

Comments:

As the ContactPoint databases do not currently apply to Northern Ireland, the PSNI envisages little requirement for pharmacists in Northern Ireland to access the database.

However, should an initiative similar to that offered by ContactPoint be rolled out in Northern Ireland, it may be that the ContactPoint ISA-registration requirements would be closely read across from England, albeit with the potential for modifications. Should a scheme similar to ContactPoint be instituted in Northern Ireland, the PSNI could envisage pharmacists operating in the mental health and paediatrics sectors wishing or requiring access to the database.

The PSNI believe access to such a database, with a range of potentially sensitive information contained within it, merits carefully regulated access. Accordingly, the PSNI support the proposal that the ContactPoint Regulations continue to specify that an Enhanced Disclosure is necessary for those who access ContactPoint (or similar databases constructed in the devolved administrations). The PSNI also supports the proposal that an individual who permits another individual to access such a database can register their interest in said individual and receive updated ISA-registration status in respect of that individual

10 Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity? (paragraphs 5.7 - 5.8)

Agree

Disagree

Not sure

Comments:

It is the understanding of the PSNI that the likelihood remains that community pharmacy will be defined as regulated activity. However, aspects of community pharmacy might be defined as controlled activity, for example, a pharmacy employee accompanying a pharmacist or attending alone on regular visits to care homes, educational sessions at Sure Start centres or schools, or deliveries to the infirm or mobility impaired.

The PSNI support the proposal that employers, such as those in the community pharmacy sector, be required to obtain an enhanced disclosure and conduct a risk assessment before employing an individual barred from the ISA register in controlled activity. As a barred individual is no longer covered by the ISA scheme, an enhanced disclosure is the main way to ensure information on criminal behaviour is up to date.

However we strongly advocate that the process by which an enhanced disclosure is obtained is constructed to be convenient and simple to understand for employers. The user-friendliness of systems should be put under review by the ISA at timely intervals.

The processes and obligations for obtaining an enhanced disclosure should also be well communicated to all health professionals. The Society request that the responsibility for communication to employers about their obligations in relation to barred individuals is well defined.

Many employers in pharmacy are small businesses and can often find the

introduction of new regulations onerous. The ISA should be respectful of this and work with pharmacists and their regulatory bodies to ensure new responsibilities are well understood. The ISA should develop a communications strategy, using partner organisations such as the PSNI, as required.

The PSNI envisage requiring that the registration of any pharmacist barred from the ISA register be reviewed by the PSNI after due notification from the ISA. The PSNI do not believe barring from the ISA register should *automatically* mean barring from the professional pharmacist register. The PSNI has its own Fitness to Practice procedures and there may be roles outside of spheres of regulated activity where a pharmacist could practice. If a decision was made to maintain a pharmacist's registration after an ISA decision to bar the pharmacist from the ISA registers then an enhanced disclosure check should be obligatory for any controlled activity thereafter.

The PSNI are concerned that, whilst the penalties and obligations for employers appear clear in relation to checking the ISA register in the sphere of regulated activity, the same does not yet seem to be the case in the sphere of "controlled activity". Further clarity on this matter would be welcomed.

Employees in a pharmacy who may work in controlled activities	
community/hospital/mental health/prison pharmacy	Till worker Delivery driver Pre registration trainee Technician/ dispensing assistant Medicines counter assistant domestic School/care home visit assistant Administration staff

11 Are there good reasons for employers in controlled activity to have access to Enhanced Disclosures for individuals who are not barred and who are ISA-registered? (paragraphs 5.4 - 5.6). If so, for what purpose would the information on the Disclosure be used?

Yes
 No
 Not Sure

Comments:

The PSNI does not at this time foresee good reasons for employers in controlled activity to have access to Enhanced Disclosures for individuals who are **not** barred and who **are** ISA-registered. The PSNI believe employers should have confidence in the processes and determination of the ISA board on the suitability of individuals to be registered. If an ISA registration enables an individual to work in a regulated environment, it should certainly qualify the individual to work in a controlled activity.

12 a) Do you agree that employers, before employing a barred person in controlled activity, should be required to conduct, make a record of and retain a copy of a risk assessment? (paragraph 5.9)

Yes

No

Not sure

Comments:

The PSNI view such a measure as constituting a fairly significant regulatory burden for employers employing a person in controlled activities, particularly for small businesses such as those in the community pharmacy sector. The PSNI would like to be assured that the introduction of such a measure was proportionate to risk and had identifiable merit. The PSNI do not think the consultation document made that case. The proposal at this stage seems unclear and not well made in the consultation.

Noting this, the PSNI believe it should be the case that a risk assessment be undertaken by the employer when employing an ISA-banned individual in controlled activity. However, it is also unclear in the consultation to whom, if anybody, the risk assessment would be shared. The PSNI suggest risk assessments should have some consistency and therefore a fuller definition from the ISA of what is an appropriate risk assessment would be welcome. The PSNI also seek clarity if it is expected that the risk assessment requirement will be defined in guiding principles or in more detail in regulation?

The ISA will also need to support employers with clearly worded guidance on the procedure and legal obligations. Training may also be required.

12 b) Do you agree that employers employing a barred person in controlled activity, should be required to ensure the person will be appropriately supervised? (paragraph 5.10)

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Not sure
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Comments:

Again, the ISA should support employers with clear and precise guidance, in conjunction with partner organisations such as the PSNI.

12 c) Should the employer be required to record the supervision arrangements in the risk assessment? (paragraph 5.10)

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Again, the ISA should support employers with clear and precise guidance, in conjunction with partner organisations such as the PSNI.

13 Do you agree that the employer should be required by regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals? If so, how frequently should it be repeated? (paragraph 5.13)

Agree

Disagree

Not sure

Comments:

The Society believes, at least in respect of pharmacy, there should be a requirement for employers to obtain enhanced disclosures on ISA-barred employees at regular intervals. This should not be required for employees who are on the ISA register.

As to how often an employer should obtain an enhanced disclosure on an employee barred from the ISA register, this should be proportionate to the risk posed by the individual in the activity undertaken. The PSNI suggest it should be regularly reviewed and this should be at least annually.

The employer should be supported in the management of this risk by appropriate communications and guidance from both the ISA and his/her professional regulator. To this end, the ISA should maintain regular dialogue with professional regulators in the health sector on communicating regulatory obligations to employers. We suggest the Government work closely with professional regulators in the health sector between now and the introduction of the ISA scheme to ensure all obligations are well understood by relevant employers.

The ISA should also keep their systems under regular and timely review to ensure they are as user friendly to employers as practicable. Procedures that might lead to an employer being informed automatically of new offences committed by their employee would offer greater public protection than a system requiring proactive enhanced disclosures by the employer. As stated elsewhere in this consultation response, the PSNI, whilst supporting the spirit of the legislation, hold concerns about the weight of obligation on employers to ensure the operating of the ISA safeguarding systems.

14 Do you agree with our proposed phasing principles? Are there particular issues for certain sectors? (paragraphs 7.1 - 7.4)

Agree

Disagree

Not sure

Comments:

The PSNI agrees with the proposed phasing principles.

In addition, the PSNI strongly support the consultation document's statement that *"The phasing arrangements will need to be managed by means of effective communications and with the full understanding of employers and people who work with vulnerable groups"*.

To this end, the PSNI suggest close collaboration between the ISA, professional regulatory bodies and others on the matter of communication. The agreement and implementation of a joint communications strategy and action plan between these bodies may be required to ensure the smooth implementation of the new regulations.

Whilst the PSNI wish to be a strong partner to the ISA on this matter, we do look to the ISA to take the lead in this activity.

15 Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational institutions? If not, why? (paragraphs 9.2 - 9.13).

Agree

Disagree

Not sure

Comments:

For the purposes of future planning, the PSNI requires greater certainty from the Government as to whether community pharmacy will be defined as a regulated environment under the ISA regulations.

Otherwise the proposals in the consultation document for checking the arrangements for personnel suppliers appear reasonable and proportionate. In the pharmacy sector these proposals would be applicable to locum agencies and Universities placing students in regulated environments to gain experience.

16 Do you agree with our proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA scheme? (paragraphs 9.25 - 9.30)

Agree

Disagree

Not sure

Comments:

The PSNI agrees with the consultation's proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA scheme.

In a scenario in which community pharmacy is considered a regulated activity, and by extension, a community pharmacy is considered a Regulated Activity Provider (RAP), the PSNI consider the default position of the legislation to be sufficient: the RAP is required to check that an employee or volunteer they use is ISA-registered by carrying out an online check.

17 Should anything be added to our proposed understanding of harm?
(paragraphs 10.3 - 10.5)

Yes

No

Not Sure

Comments:

The PSNI support the definition of harm given in the consultation document and do not have further suggestions for addition at this stage.

Clarity on the processes for reviewing the harm test in future, and communicating its applicability would be welcomed.

18 Do you agree that the list at Annex G will capture all the information that the ISA would require to make barring decisions?

Agree

Disagree

Not sure

Comments:

At the present time, the PSNI agrees that the lists at annex G should be sufficient to capture all the information that the ISA would require to make barring decisions.

In relation to the referral duties of Keepers of Registers, the PSNI would like to take the opportunity to raise the issue of data-sharing. We strongly support the comment in the consultation document that *“information sharing is central to the successful operation of ISA”*

On institution of the ISA register, the consultation document envisages the need for the ISA to check the histories of 11 million people. This is likely to include the 2,000 pharmacists of Northern Ireland. The ISA may therefore require extensive access to our register and records. Additionally, the PSNI share the concern raised in the consultation document that there may be room for manual error in the system should information fail to be referred from the register keeper to the ISA, or from the ISA to the register keeper, in the mistaken belief

that a referral has been made somewhere else in the chain.

Given these factors, the PSNI would welcome discussion with the IVA on the precise forms and processes for data-sharing between the two organisations. It would preferable to develop a standardised approach across the various register keepers in the health professions.

19 a) At what stage in the ISA's consideration process do you believe employers should be notified? (paragraph 11.3)

Comments:

The PSNI shares the view put forward in the consultation document that it is important that the ISA can notify employers, **and keepers of professional registers**, as soon as the ISA establish an employee poses a serious risk of harm.

The PSNI understand it to be the case that as soon as an individual is established to pose a serious risk of harm they will be removed from the ISA register. Therefore it is adequate for the ISA to notify employers, **and keepers of professional registers**, at the stage an individual is removed from the ISA register. There should be a stringent requirement for the ISA to do this at the earliest possible opportunity.

Soft data on any individual which is not evidence based should not be shared with employers as this may be prejudicial to the individual concerned and any information passed on must be hard data (i.e. evidence-based) to allow any resulting determination to be fairly made.

19 b) What information should the ISA pass to employers at this stage? (paragraph 11.3)

Comments:

The full details of the case that are in the public domain should be passed to the employer, **and keeper of the relevant professional register**, at the stage at which an employee is taken off the ISA registration.

This detail will then inform the employer, **and keeper of the relevant professional register**, whether the individual can work in a controlled activity and if so under what circumstances.

20 Please use this space for any other comments.

Comments:

Payment of registration fees

The PSNI are uncertain at this stage, in respect to pharmacy, to whom the obligation to pay an ISA registration fee will fall. Will this be the employer, the registering body or the individual in question? The PSNI would appreciate any information from DCSF/Home Office/Shadow ISA about how they envisage this working across regulated health professions. Will there be a standard approach across health professions? The PSNI note that pharmacists in Northern Ireland are already subject to a wide range of fees for regulation, which have increased in recent years to cover the cost of the enhanced duties of their regulator. It would be preferable if the one-off fee for ISA registration could be met by the DHSSPS (NI) whose objectives and priorities pharmacists serve.

Non-national workers

The PSNI hold strong concerns about how the system will operate in relation to

employees from other EU states and non-EU states, especially in relation to pharmacy. The PSNI would welcome some detail from the DCSF/Home Office/Shadow ISA about how this section of the workforce will be covered by the ISA regulations, and the nature of data-sharing with EU and non-EU states to support this. Are the DCSF/Home Office/Shadow ISA content with the reliability of such data from other EU and non-EU states?

The PSNI point out to the Government the particular issues faced in Northern Ireland, the only part of the United Kingdom to share a land border with another European state. Applicable across health, education and voluntary bodies, this situation means workers with vulnerable adults could work in Northern Ireland but be resident in the Republic of Ireland. The PSNI would be grateful to be updated on what assessment the Government has conducted on this particular part of the regulatory impact of the ISA register.

Regulatory burden

Whilst the PSNI respect the legitimacy of the ISA regulations, as recommended by the detailed Bichard Inquiry, and passed by the national legislature in Westminster, in common with other bodies, we express some concerns about the regulatory burden arising from the measures. The ISA should do all in its power to make the introduction of the regulations as straight forward and well understood as possible for employers and other bodies.

The PSNI would greatly appreciate an estimation by the ISA as to what regulatory cost to pharmacy will be developed as a result of the ISA regulations. All regulation can arise a cost to the UK economy, whether in the private, public and voluntary sector. A strong understanding of regulatory cost is important in understanding the value and appropriateness of new measures such as ISA-registration obligations.

Processing times for new registrants

It is of the utmost significance that the ISA is able to handle its large workload in a highly efficient and timely manner in order that employers can put their faith in the organisation to process a new registrant quickly. This is critically important for employers looking to recruit new staff to fill vacant posts.

Rehabilitation of Offenders Act 1974

The PSNI would welcome further detail on how the DCSF/Home Office/Shadow

ISA envisages the ISA regulations interacting with the Rehabilitation of Offenders Act 1974, particularly in respect of potential workers in a pharmacy context.

For example, the PSNI have a concern that some potential pharmacy registrants could be barred from the ISA register for life for an isolated misdemeanour committed as a youth.

Security of Information

In light of recent high profile cases of lost personal data (HMRC, DVLA), the PSNI seek some reassurances that the ISA will only share personal data and details of its register through highly secure methods and follow strict best practice.

The status of the self-employed

The PSNI consider that all pharmacists with regular contact with patients and/or access to patient records, should be ISA registered. We include pharmacist employers under this definition.

However, in information events related to this consultation, the requirement of self-employed practitioners, whether GPs, pharmacists or dentists, seemed unclear.

The Society would welcome further clarity on the status of the self-employed to the ISA register requirements. It is the Society's view that all practitioners in the health service with frequent and/or intensive contact with vulnerable groups should be ISA registered. This will ensure the objectives of the legislation are met, in providing a strong set of regulation to protect vulnerable groups. It will also ensure consistent application across the health sector work force and close some potential loopholes.

21 Please let us have your views on responding to this consultation (e.g. the number and type of questions, was it easy to find, understand and complete etc.).

Comments:

The consultation focused strongly on employer implications and had little focus on the impacts to keepers of professional records. The Society consider this an omission. We strongly suggest Government conducts a dedicated dialogue with professional regulators in the health sector to examine and resolve the many issues that arise for regulators before the ISA register is introduced. A standardised approach across regulators would be preferable, especially in light of the Government's 2007 White Paper on healthcare regulation.

The consultation document was clear on the potential penalties an employer could face in relation to breaching the ISA regulations in the sphere of regulated activity, but was clear on the liabilities of employers in the sphere of controlled activity. The consultation did not include much detail into the reasoning for, and nature of, proposed risk assessments to be conducted for ISA-barred individuals working in controlled activity.

The Society would have appreciated copies of the consultation documents in hard copy being sent by post

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

 No

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 20 February 2008

Send by post to:

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Department for Children, Schools and Families
Area 1A, Castle View House
East Lane
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Cheshire WA7 2GJ

or by email to

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